

6 July 2010

## FIRST SECTION

Application no. 63898/09  
by Konstantin Vladimirovich BUBON  
against Russia  
lodged on 11 October 2009

### STATEMENT OF FACTS

#### THE FACTS

The applicant, Mr Konstantin Vladimirovich Bubon, is a Russian national who was born in 1974 and lives in Khabarovsk. He is a lawyer practising in the Khabarovsk Region and holds Ph.D. degree in law.

#### A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

On a regular basis the applicant writes articles for various Russian law journals and on-line legal information databases and networks. According to the applicant, this work usually requires extensive scientific research of the law-enforcement sphere in the Khabarovsk Region. The applicant supported his assertion with copies of contracts with well-known Russian publishing houses, owners of a number of legal magazines, including the one supervised by the Secretariat of the President of the Russian Federation. Under the contracts he undertook an assignment of writing articles on specific topics of legal and social interest.

Having received an assignment to write an article discussing prostitution and fight against it in the Khabarovsk Region, on 12 May 2009 the applicant sent a letter, by registered mail, to the head of the Khabarovsk Regional police department asking for statistical data for his research. The letter, in so far as relevant read as follows:

“[I am] interested in information for the period between 2000 and 2009, in particular:

- [information on] a number of persons found administratively liable under Article 6.11 of the Russian Code of Administrative Offences (prostitution), with indication of their sex, region of their residence (residents of the Khabarovsk Region or visitors), nationality (nationals of the Russian Federation, foreigners or stateless persons) and a year [when the offence was committed];
- [information on] a number of criminal cases instituted during the abovementioned period under Articles 241, 242, 242.1 [and] 127.1 of the Russian Criminal Code (cases related to sexual exploitation), with indication of the specific Articles of the Criminal Code and a year [when the case was opened];
- [information on] a number of individuals found criminally liable under Articles 241, 242, 242.1 [and] 127.1 of the Russian Criminal Code (cases related to sexual exploitation), with indication of their sex, age, educational background, region of the permanent residence (residents of the Khabarovsk Region or visitors), nationality and the period [when the crime had been committed];
- general information on sentences imposed on the individuals found criminally liable under Articles 241, 242, 242.1 [and] 127.1 of the Russian Criminal Code (in cases pertaining to sexual exploitation) – what types of sentences and in how many cases they were imposed, and years when [those sentences were imposed].

...

[I] stress that I do not need any specific personal information about individuals found administratively or criminally liable; [I only need] general statistical information for writing a scientific article.”

As follows from an acknowledgement of receipt, the letter reached the Khabarovsk Regional police department on 25 May 2009.

Following the expiration of a thirty-day time-limit established by the Russian law for State officials to reply to individual letters and in the absence of any response, on 26 June 2009 the applicant lodged a claim with the Tsentralniy District Court of Khabarovsk, complaining about the police authorities' failure to provide him with the requested information and asking for an access to such information. In particular, relying on the Russian Information Act (see below) and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the applicant argued that the officials' implied refusal to provide him with the information was unlawful as he had not asked for access to any confidential personal information or State secrets or information related to internal police working methods. His request purely related to statistical data of general character which was stored by the Information centre of the Khabarovsk Regional police department (hereinafter – the Information Centre).

On 18 July 2009 the applicant received a letter from the head of the Information Centre, notifying him that the requested information could only be summoned on a written order by a deputy Minister of Internal Affairs, heads of regional and municipal police departments and their divisions, prosecutors and investigators from prosecutor's offices. Individuals and legal entities were not granted access to such information. However, it was open to the applicant to apply to the Federal Service of State Statistics, and in particular its territorial department in the Khabarovsk Region, with a request for provision of statistical data.

Five days later, replying to the applicant's request for provision of information, the head of the Khabarovsk Regional State Statistics Department (hereinafter – the Statistics Service) wrote that the requested information was in exclusive possession of the Khabarovsk Regional police department as it had never been made available to the Statistics Service.

The applicant filed copies of the letters from the Information Centre and Statistics Service with the Tsentralniy District Court of Khabarovsk.

On 4 August 2009 the Tsentralniy District Court of Khabarovsk dismissed the applicant's claim, reasoning that the requested information did not touch upon the applicant's rights and legitimate interests and that therefore the authorities' refusal to grant him access to such information was lawful and well-founded.

The applicant appealed, arguing, *inter alia*, that the police authorities had exclusive possession of the information requested by him and he had no other means, including through assistance by the Statistics Service, to obtain the necessary data. In addition, he submitted that the fact that his rights and legitimate interests were not affected by the requested information had no bearing on the case as not only those directly concerned were granted access to public information under the Russian law.

On 16 September 2009 the Khabarovsk Regional Court upheld the judgment of 4 August 2009, endorsing the District Court's reasoning.

## B. Relevant domestic law

*Federal Law no. 149-FZ of 27 July 2006 "On Information, Information Technology and Protection of Information" (Information Act)*

The relevant provisions of the Information Act read as follows:

### Article 8. Right of access to information

“1. Citizens (individuals) and organisations (legal entities) (hereinafter – the organisations) have a right to search for and receive any information in any form and from any sources under the condition that requirements of the present Federal law and other federal laws are respected.

2. A citizen (an individual) has a right to receive information directly affecting his rights and freedoms from State bodies, municipal authorities and their officials in accordance with the procedure established by the law of the Russian Federation.

...

4. Access to [the following information] cannot be restricted.

1) legal acts affecting rights, freedoms and obligations of an individual and citizen, and also identifying legal

- status of an organisation and competency of State bodies [and] municipal authorities;
- 2) information on the state of environment;
  - 3) information on activities of State bodies and municipal authorities, as well as on the use of budgetary funds (save for information comprising State and official secrets);
  - 4) information stored in open funds of libraries, museums and archives, as well as in State, municipal and other information systems created for or aimed at the provision of such information to citizens (individuals) and organisations;
  - 5) other information restriction of the access to which is prohibited by the federal law.
5. State bodies and municipal authorities should provide access to information about their activities... in compliance with federal laws, laws of the constituent elements of the Russian Federation and legal acts of municipal authorities. A person wishing to obtain access to such information is not obliged to explain the necessity for its receipt.

6. Decisions and actions (inactions) of State bodies and municipal authorities, public associations, officials which violate the right of access to information may be appealed against to a higher instance body or a higher-ranking official or a court.

...

8. [The following] information is provided without a fee:

- 1) information on activities of State bodies and municipal authorities when that information has been allocated to information telecommunications networks;
- 2) affecting rights and obligations, established by the law of the Russian Federation, of the person concerned;
- 3) other information established by law.

9. A State body or municipal authority may impose a fee for provision of information on its activities only in cases and under conditions established by federal laws.”

#### **Article 9. Restrictions on access to information**

“1. Federal laws lay down restrictions on access to information to protect the constitutional system foundation, morals, health, rights and legitimate interest of other persons, to ensure national defence and security of the State.

2. It is mandatory to maintain confidentiality of information access to which is restricted by federal laws.

3. Protection of information comprising State secrets is performed in accordance with laws of the Russian Federation on State secrets.

4. Federal laws regulate conditions under which information is considered to comprise commercial, official or other secrets, [lay down] an obligation to maintain the confidentiality of such information and [establish] responsibility for its disclosure...”

## COMPLAINT

The applicant complained under Article 10 of the Convention that he had been denied access to information necessary for his scientific research.

### **QUESTIONS TO THE PARTIES**

1. Has there been an interference with the applicant's freedom of expression, in particular his right to receive and impart information, within the meaning of Article 10 § 1 of the Convention (see *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, §§ 26-29, 14 April 2009)?

2. If so, has the interference in question been “prescribed by law and... necessary in a democratic society” within the meaning of Article 10 § 2 of the Convention?

BUBON v. RUSSIA – STATEMENT OF FACTS AND QUESTIONS

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